

LEGAL AUTHORITY

Criminal Justice Information Services Division (CJIS) Policy Council Act, 1974 PA 163. (MCL 28.211 et. seq.).

OFFICIAL USE

Accessing the Law Enforcement Information Network (LEIN) must **only** occur in the performance of official duties. Any inappropriate access, use or disclosure of this information may result in disciplinary action. County directors are responsible for authorizing appropriate staff to access LEIN. They will also be responsible for maintaining the security, the confidentiality and the appropriate use of LEIN information. DHS staff cannot do LEIN checks for other government entities, or non-profit agencies contracting with DHS; see FOM 722-06A, Disclosure of LEIN Information in this item.

**Definitions of
Terms Applicable
in the Disclosure
of LEIN
Information**

The following four listed terms are used throughout FOM 722-06A to assist in clarifying the LEIN process. Caseworkers should be familiar with the terms and their definitions when implementing the LEIN policy.

General Statement

A statement which summarizes the behavior of an individual but does not use the legal terminology found on LEIN documents, such as information obtained from law enforcement indicates that Mr. X has a history of illegal sexual acts that do not include minors.

LEIN Documents

The actual printed paper (or photocopy) report received from a law enforcement agency or generated from the DHS-based LEIN terminal, in response to a LEIN request.

LEIN Information

The information contained in the LEIN document, such as Mr. X was convicted of second degree criminal sexual conduct.

**Verified LEIN
Information**

Information obtained from credible sources, police or court personnel, which **corroborates** information obtained from LEIN. It may be the same as the actual LEIN information itself, such as The Wayne County Sheriff's Department confirmed that Mr. X was convicted of second degree criminal sexual conduct. Another example is a police report that contains information about arrests for violence in the home, etc. Law enforcement officers may be subpoenaed to testify as needed in court. Consultation with the prosecutor or DHS legal representation is encouraged regarding the evidentiary value of this information.

LEIN OVERVIEW

Local office child welfare programs have access to information on the Law Enforcement Information Network (LEIN) through a department agreement with the Michigan State Police. This access includes the following information:

- State of Michigan criminal history information.
- Internet Criminal History Access Tool (ICHAT).
- Sex Offender Registry.
- Missing/wanted persons.
- Prison and parole information.
- Gun registration/permits.
- Personal protection orders.
- Officer cautions.
- Michigan Secretary of State Information.
- National Crime Information Center - wants/warrants only from all states.

Information not available to DHS is Canadian criminal history information and criminal convictions from other states. This information is restricted to criminal justice agencies.

LEIN Requests

Verified information from criminal records checks can be very useful in assessing the potential risk for abuse of a child by their parent or by a significant adult such as a non-parent adult living in the parent's home or may otherwise have access to the child. Criminal record checks should be conducted in those instances where factors present in the case lead the caseworker and his/her

supervisor to become concerned that information regarding criminal convictions would be helpful in case planning.

LEIN checks **must** be conducted on **all** adult household members and non-parent adults for all cases:

- When a child(ren) will be having parenting time within a parent's home.
- When the court orders placement with a relative prior to the completion of the required home study. In this case, a criminal history check **must be completed on all household members by the next business day.**

Note: The intent is to complete the criminal history check as quickly as possible to ensure child safety.

- When a return home is being considered.
- When a child(ren) is placed at home and new individuals move into the home or there is a new non-parent adult involved with the family.
- When a child is placed with a relative or a home study is being conducted on a relative's home, see FOM 722-03, Placement with Relatives, for more information when there is reason to believe that this information is necessary to make a decision regarding caseworker safety. In these instances, a LEIN check must be completed prior to contact with a family; see FOM 722-06, Visitations.

The LEIN checks must include criminal convictions, arrest/warrants and officer cautions. In addition, if the home is suspected of being a drug house, or domestic violence is suspected, a gun registration/permit check and a personal protection order check must be done.

Caseworkers must also conduct a LEIN check on other individuals, including minor household members, living within the parents or relatives home when there is reason to believe that this information is necessary to make a decision regarding child safety or worker safety.

**Requesting a LEIN
Clearance**

LEIN clearances must be requested on a DHS-269, Criminal History Information Request. The subject of the LEIN clearance and the reason for requesting a LEIN clearance must be documented on this form. The case number must be recorded on the DHS-269. A copy of the DHS-269 must be maintained in the Legal Section of the foster care case file; see FOM 722-05, Case Record.

**Evaluation of LEIN
Information**

Caseworkers are to evaluate any information received from a parent, relative or others, a LEIN check, ICHAT clearance, or other collateral sources of information that an adult caretaker has a history of violent behavior or was convicted for a violent crime. Care and discretion is to be used in evaluating the information received. The existence or nonexistence of an arrest or criminal record is only one factor in assessing risk. The nonexistence of an arrest or criminal record is not **necessarily** an indication of low or no risk.

The existence of an arrest or criminal record must be assessed in light of when (how long ago) the offense occurred and whether any treatment was provided and whether it was effective. The information obtained is to be included in assessing risk and making a decision regarding the safety of the child(ren). Information which indicates the parent or household member was involved in violent behavior, or convicted of crimes against persons or crimes against self, including substance abuse, should be given particularly close attention.

Sexual abuse, serious physical abuse and domestic violence convictions must also be closely examined by the caseworker to determine if there will be a risk to the child if returned home or placed with a relative; see Adverse Actions below for restrictions on placement due to criminal convictions. These types of convictions may be a clue as to the dynamics within the family that could place a child at risk from the parent or household member's behavior.

Adverse Actions

Unless ordered by the court, children may not have parenting time or be placed within a home of a parent or a relative if any adult household member or non-parent adult has a felony conviction for one the following crimes:

- Child abuse/neglect.
- Spousal abuse.
- A crime against children (including pornography).
- A crime involving violence, rape, sexual assault, or homicide but not including other physical assaults or battery.

If the individual who was convicted of one of the above crimes is a non-parent adult, for CPS cases, the first consideration should be given to requesting that the individual who presents the risk be court-ordered to leave the home before removal of the child(ren). For more information on non-parent adults, living together partners (LTP), and requests for court orders, see FOM 722-06, Parental Involvement in Developing the Service Plan.

If the results of the criminal record check reveal that a member of the household has a felony conviction within the last five years for any of the following:

- Physical assault.
- Battery.
- A drug related felony.

This information must be assessed to determine whether there are safety issues that must be addressed. For more information on relative placements and home studies, see FOM 722-03, Placement with Relatives. For information and other requirements when a child(ren) is returning home, see FOM 722-07, Foster Care - Permanency Planning. For information on parenting time, see FOM 722-06, Developing the Service Plan.

Outstanding Warrants

DHS offices must contact local law enforcement agencies when they become aware of the whereabouts of a person with any outstanding warrants resulting from a LEIN inquiry. DHS must inform the local law, enforcement agency of the location of the individual and the individuals involvement, if any, with a DHS case. This notification of local law enforcement must be recorded in the Social Work Contacts section of the case service plan.

REBUTTAL PROCESS

If a person challenges the accuracy of a criminal record check, the DHS staff should refer the person to their nearest law enforcement

agency and follow that law enforcement agency's process for challenging a criminal record. The individual should be directed that once the response to their challenge is received, they must then provide that information to DHS.

LEIN Document Disposal

LEIN documents **must not** be filed in the foster care case record. LEIN documents must be cross-cut shredded or incinerated after review, verification of data, and incorporation of this verified information in narratives, safety plans, and/or petitions.

Documentation of Verified Information

Only verified information should be incorporated into the narrative of the case service plans, DHS-3130-A, Children's Foster Care Initial Relative Placement Home Study, safety plans, and/or petitions. Information which is being used as evidence of child abuse/neglect is to be cited in petitions and case narratives and backed up by corroborating information from the source of LEIN.

All statements indicating that a LEIN check was completed including the **specific** information obtained from the LEIN check must be redacted whenever petitions, case service plans, home studies, and/or court reports are shared with the court, placement agency foster care providers, treatment providers, foster parents/caregivers, or any **other entity external** to DHS. LEIN documents cannot be attached to, or submitted with, petitions. Information obtained from verification of LEIN information can be cited in court petitions.

Case narratives and court reports may include verified LEIN information when this information is required by the Juvenile Code or the information is the basis for case decision making, see the definition of verified information above. **General statements** referencing verified information do not have to be redacted; for example, if the narrative states that **verified information** obtained from law enforcement indicates that an individual has a history of violent behavior, this information would not have to be redacted. Specific details **obtained from LEIN** would need to be redacted. The following are credible sources for verified information that can be quoted:

- Police/law enforcement.
- Prosecuting attorney's office.
- Internet Criminal History Access Tool (ICHAT).
- Offender Tracking Information System.
- Sex Offender Registry.
- Secretary of State.

Note: Reports, petitions and home studies cannot quote from the LEIN report or specify unverified LEIN information. The acronym LEIN **cannot** be used in any report. Additionally, caseworkers cannot disclose that LEIN had been accessed to obtain criminal history or disclose any unverified criminal history information to the subject of the LEIN check.

SECONDARY DISSEMINATION

Secondary dissemination of criminal history information obtained from LEIN/National Crime Information Center (NCIC) occurs when the information is distributed beyond the original requesting agency.

County offices must have a policy and procedure for recording secondary dissemination of criminal history information. Documentation must include:

- Name of the receiving agency.

Note: The agency must be an authorized recipient of LEIN/NCIC information including having an Originating Agency Identifier number.

- Date of dissemination.
- Name of the person the information was distributed to.

Note: Documentation must be maintained for one year.

Disclosure of LEIN Information

Due to confidentiality issues, LEIN information and/or documents must not be shared via phone, fax or electronic mail (e-mail).

LEIN documents can only be released to the court pursuant to a court order, or subpoena issued by the Circuit Court, including the Family Division.

The LEIN statute granting DHS enhanced LEIN access, (MCL 28.214(2) et. seq.) states that DHS “shall not disclose information from the Law Enforcement Information Network to a private entity for any purpose...”. The following categories of people, although not an exhaustive list, may **not** be given access to LEIN information, either directly or indirectly, by DHS:

- Placement agency foster care providers.
- Contractors.
- Individuals, agencies and entities external to DHS.
- Lawyer-Guardian Ad Litem.
- Unauthorized DHS staff or authorized staff for unauthorized purposes.

LEIN information is not subject to Freedom of Information Act requests and can only be released through a court order or subpoena.

The law also specifies criminal penalties for non-compliance with the confidentiality provisions of the law.

Penalty for Improper Release of LEIN Information

MCL 28.214(2) prohibits the disclosure of LEIN information to any private entity for any reason. The first offense is a misdemeanor punishable by 90 days imprisonment or \$500.00 fine, or both. The second offense is a felony punishable by not more than 4 years imprisonment or \$2,000.00 fine, or both.

Staff found to have misused LEIN information will be subject to disciplinary action up to and including dismissal.

All suspected violations of LEIN policy pertaining to unauthorized access, use or disclosure of LEIN information are to be immediately forwarded to the Office of Inspector General.

TRACKING METHODS (AUDIT)

As a requirement of the agreement with the Michigan State Police granting DHS LEIN terminals, county offices must document all LEIN clearances by completing the DHS-268. These forms are to be completed as part of the audit process and must be maintained on file at the local office.

Foster care staff must use the foster care case number as the permanent tracking number for all LEIN clearances conducted in reference to that foster care case.